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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,429	11/26/2003	Alex F. Hall	TRITON0301	1198

24507 7590 09/05/2007

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EXAMINER	
LEFF, STEVEN N	

ART UNIT	PAPER NUMBER
1761	

MAIL DATE	DELIVERY MODE
09/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/724,429	HALL, ALEX F.	
	Examiner	Art Unit	
	Steven Leff	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *8/13/07*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-28* is/are pending in the application.

4a) Of the above claim(s) *1-13* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *14-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *26 November 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *4/16/04, 8/2/07*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election of group II, claims 14-28 in the reply filed on August 13th, 2007 is acknowledged.

Claims 1-13 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on August 13th, 2007.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- Claims 25 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention as it is unclear if the phrase "substantially 37 degrees" represents at least 37 degrees or about 37 degrees. It is not clear what range of degree is encompassed by the phrase "substantially 37 degrees".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- Claims 14-20, and 26-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Koppelman (1919028).

  With respect to claims 14-20, and 26-28, Koppelman teaches a produce container having an opened position and a closed position. More specifically Koppelman teaches a produce container which comprises a first tray (fig. 1 ref. #1), a second tray positioned opposite the first tray (fig. 1 ref. # 2), with the produce container in the closed position, a

plurality of cells (fig. 1 ref. # 4) for containing produce items (col. 1 line 35), wherein each cell is positioned within the first tray and the second tray, wherein each cell is separated from the each of the other cells such that each produce item is prevented from contacting another produce item (col. 2 line 5+), and at least one spacer (fig. 1 ref. #5) positioned between the first tray and the second tray defining an air space between the first tray and the second tray (col. 1 line 16+). With respect to the air space it is noted that claim 1 teaches an air space between the two trays and does not require a defined air path through the trays.

Koppelman continues by teaching that the produce container further comprises a hinge (fig. 1 ref. #3) mounted between the first tray and the second tray, such that the produce container can be translated from its open position to its closed position by moving the one of the first tray and the second tray about the hinge.

Koppelman continues by teaching that the first tray has a center area and the second tray has a center area, wherein the at least one spacer comprises a center spacer positioned at least substantially adjacent the center area of at least one of the first tray and the second tray (figs 1-4 ref. # 5), where the center spacer further comprises a lock (fig. 2 ref. #'s 5 and 6, col. 2 line 61+). Koppelman further teaches that at least one spacer comprises a center spacer and where the plurality of cells is four cells positioned about the center spacer (figs 1-4 ref. # 5), or where the at least one spacer comprises two center spacers and where the plurality of cells is six cells positioned such that four cells are positioned about each center spacer (figs 1-4 ref. # 5).

In addition, Koppelman teaches that each cell of the plurality of cells is substantially a curved shape (fig. 1), substantially a teardrop shape (fig. 1), or substantially in the shape of a mango (fig. 1) where it is noted that claims 26-28 do not recite which axis of the container is to be substantially in the specified shape. Therefore since all three limitations are items that have a substantially round base, and when viewed from the top Koppelman teaches a substantially circular configuration, thus Koppelman meets all of the limitations with respect to claims 26-28.

- Claims 14, 16, 19-20, and 26-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Michael (3416690).

With respect to claims 14, 16, 19-20, and 26-28, Michael teaches a produce container having an opened position and a closed position. More specifically Michael teaches a produce container which comprises a first tray (fig. 1 ref. #11), a second tray positioned opposite the first tray (fig. 1 ref. # 12), with the produce container in the closed position, a plurality of cells (fig. 1 ref. # 14) for containing produce items (col. 1 line 35), wherein each cell is positioned within the first tray and the second tray, wherein each cell is separated from the each of the other cells such that each produce item is prevented from contacting another produce item (col. 2 line 5+), and at least one spacer (fig. 1 ref. # 15) positioned between the first tray and the second tray defining an air space between the first tray and the second tray (col. 3 line 36+).

Michael continues by teaching that the first tray has a center area and the second tray has a center area, wherein the at least one spacer comprises a center spacer positioned at least substantially adjacent the center area of at least one of the first tray and the second tray (figs 1 and 2 ref. # 100 hand annotated document), where at least one spacer comprises a center spacer and where the plurality of cells is four cells positioned about the center spacer (figs 1 and 2 ref. # 100 hand annotated document), or where the at least one spacer comprises two center spacers and where the plurality of cells is six cells positioned such that four cells are positioned about each center spacer (fig. 5).

In addition, Michael teaches that each cell of the plurality of cells is substantially a curved shape (fig. 2), substantially a teardrop shape (fig. 3, col. 1 line 35), or substantially in the shape of a mango (fig. 3, col. 1 line 35) where it is noted that claims 26-28 do not recite which axis of the container is to be substantially in the specified shape. Therefore since all three limitations are items have a substantially round base, and when viewed from the top Michael teaches a substantially circular configuration, Michael meets all of the limitations with respect to claims 26-28. It is further noted when viewed from the top that figure 5, clearly shows a non-uniform circular configuration, i.e. substantially in the shape of a teardrop or a mango.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

- Claims 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koppelman (1919028) in view of Altenburg (2843496).

Koppelman is taken as above, however Koppelman does not teach that each of the cells is canted at an angle, specifically at an angle of between 35 and 40 degrees and more specifically at an angle of 37 degrees.

With respect to claims 21-25 Altenburg teaches a pear tray. More specifically Altenburg teaches that with the produce container in the closed position the first tray and the second tray are positioned about a central plane, wherein each cell includes a cell axis set at a cant angle to the central plane, where the cell axis is a longitudinal axis positioned to substantially bisect the cell at an angle of substantially 37 degrees (col. 3 line 50+).

Therefore one of ordinary skill in the art would have been motivated to combine the teachings of Koppelman and Altenburg since both teach individual cells for produce for their art recognized and applicant's intended purpose of packaging delicate produce, where the produce is to be protected, thus necessitating individual cells, and where Altenburg further teaches providing the cells at a canted angle for the purpose of providing a more space efficient tray.

Thus it would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant to have canted the individual cells due to the fact that Koppelman specifically teaches the advantage of providing canted cells thereby providing a longitudinally smaller tray for a given number of recesses and thus increasing

the number of produce which can be stored in a single tray, thereby increasing the total number of produce which can be shipped in a single load.

It would have thus been further obvious to teach a specific range with respect to the cant angle, and to have specifically taught 37 degrees as the cant angle due to the fact that the cant angle would provide for a more space efficient packing tray in either a horizontal plane or a vertical axis, as is taught by Altenburg, where the greater the cant angle causes a longitudinally smaller tray for a given number of recesses. It is further noted that MPEP 2144.04 VI (A) states that the mere scaling up or down of a prior art process capable of being scaled up, if such were the case, would not establish patentability in a claim to an old process so scaled and thus would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant.

- Claims 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michael (3416690) in view of Altenburg (2843496).

Michael is taken as above, however Michael does not teach that each of the cells is canted at an angle, specifically at an angle of between 35 and 40 degrees and more specifically at an angle of 37 degrees.

With respect to claims 21-25 Altenburg teaches a pear tray. More specifically Altenburg teaches that with the produce container in the closed position the first tray and the second tray are positioned about a central plane, wherein each cell includes a cell axis set at a cant angle to the central plane, where the cell axis is a longitudinal axis positioned to substantially bisect the cell at an angle of substantially 37 degrees (col. 3 line 50+).

Therefore one of ordinary skill in the art would have been motivated to combine the teachings of Michael and Altenburg since both teach individual cells for produce for their art recognized and applicant's intended purpose of packaging delicate produce, where the produce is to be protected, thus necessitating individual cells, and where Altenburg further teaches providing the cells at a canted angle for the purpose of providing a more space efficient tray.

Thus it would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant to have canted the individual cells for its art recognized purpose of providing a longitudinally smaller tray for a given number of recesses thereby

increasing the number of produce which can be stored in a single tray, and thus increasing the total number of produce which can be shipped in a single load.

It would have thus been further obvious to teach a specific range with respect to the cant angle, and to have specifically taught 37 degrees as the cant angle due to the fact that the cant angle would provide for a more space efficient packing tray in either a horizontal plane or a vertical axis, as is taught by Altenburg, where the greater the cant angle causes a longitudinally smaller tray for a given number of recesses. It is further noted that MPEP 2144.04 VI (A) states that the mere scaling up or down of a prior art process capable of being scaled up, if such were the case, would not establish patentability in a claim to an old process so scaled and thus would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Leff whose telephone number is (571) 272-6527. The examiner can normally be reached on Mon-Fri 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SL

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9/4/07

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